

## MFP CLOSING SUBMISSIONS

### NOTES

No.	Note Text
1	See <u>Canadian Red Cross Society v. Krever Commission</u> (1997), 151 D.L.R. (4 <sup>th</sup> ) 1 (S.C.C.) at para 52-54. These principles were alluded to several times during this Inquiry, see, e.g. Notes for a speech, Commissioner Bellamy, June 24, 2002 at pg. 2, Notes for a Speech, Commissioner Bellamy, December 2, 2002 at pg. 3. See also <u>Re Nelles and Grange</u> (1984), 46 O.R. (21) 210 at pp. 215-216.
2	See <u>Canadian Red Cross Society v. Krever</u> , supra, at para. 29-31; Notes for a speech, Commission Bellamy, December 2, 2002, at pg. 3 (para. 4).
3	See <u>Canadian Red Cross Society v. Krever</u> , supra @ para. 52-54, and 57(iii): care should be taken to avoid using language in an Inquiry report that might be considered as making a finding of civil liability.
4	The necessity for scrupulous fairness in the conduct of public inquiries is repeatedly emphasized in the authorities. One aspect of this duty is the requirement to give notice of potential findings of misconduct. That obligation has been expressly enacted in the Provincial and Federal Public Inquiry legislation. However, the absence of a specific enactment in the Municipal Act, the statute under which the current Inquiry has been constituted, does not absolve the Commissioner from providing notice: See <u>Consortium Developments (Clearwater) Ltd. v. The Corporation of the City of Sarnia</u> , [1998] 3 S.C.R. 3 at para. 28-31. This requirement is specifically reflected in Rules 35 and 36 of the Rules of Procedure.
5	Indications of the City's intention to use the TCLI to advance its position in the civil litigation can be seen, inter alia, in the Inquiry transcript of February 18, 2003 at pp. 100 to 105 and 183 to 187; see also <u>Toronto (City) v. MFP Financial Services Ltd.</u> (2003), 65 O.R. (3d) 440 (Ont. S.C.J.) at paragraph 20.
6	See references, footnote 5; and see e.g. <u>Landreville v. The Queen</u> [1981] 1 F.C. 15 and <u>Jakobek v. Toronto (Computer Leasing Inquiry)</u> , [2004] O.J. No. 2889, at para. 32.
7	See: Report No. 1, Clause 1, Audit Committee, at pp. 24 to 27, COT035218, at 35220-35223. See also COT018389 (Master Equipment Lease Agreement No. 784).
8	Ashbourne, December 16, 2002 p. 9:12 to 10:4.
9	Ashbourne, December 17, 2002, pp. 27-28.
10	Ashbourne, December 16, 2002, p. 11.
11	Ashbourne, December 16, 2002, pp. 11.

No.	Note Text
12	Ashbourne, December 16, 2002, pp. 19-20.
13	COT025441.
14	COT025442.
15	COT025443.
16	Ashbourne, December 16, 2002, pp. 24-25.
17	Ashbourne, December 16, 2002, pp. 31 and following.
18	Ashbourne, December 16, 2002, pp. 44.
19	Ashbourne, December 16, 2002, p. 40.
20	Ashbourne, December 16, 2002, pp. 46-47.
21	COT025495.
22	See also Ashbourne's evidence on December 16, 2002, at pp. 65-67.
23	Ashbourne, December 16, 2002, at pp. 84-86. See also the affidavit of Dave Beattie, paragraphs 26-34, where he describes the sequence of events in obtaining quotes: transcript, March 31, 2003, pp. 63-67. See also evidence of Andrew, September 24, 2003, pp. 18 to 19, and COT032271.
24	Dave Beattie describes the steps taken by Purchasing in his affidavit, at paragraphs 26-37, transcript, March 31, 2003, pp. 63-68. The record indicates that Frank Spizarsky was also involved, but he did not testify at the Inquiry.
25	COT025485/25486.
26	Beattie, March 31, 2003, p. 114 – p. 116, line 17.
27	Pagano, February 26, 2003, pp. 39 to 41.
28	Ashbourne, December 16, 2002, p. 93; Ashbourne's evidence is that he was telephoned by Dave Beattie and informed of the outcome: December 16, 2002, p. 87. It is clear that this must have occurred on or after December 29, 1997: see COT025475, letter to Beattie from Ashbourne, confirming the terms of the lease proposal and leaving it open for acceptance to January 5, 1998.
29	COT025469.

No.	Note Text
30	COT011742.
31	COT003680.
32	COT042605 and COT042607.
33	Ibid. It is evident from the newspaper reports that the technology was leased, but some Councillors raised issues at that time about the approval and tender process followed; nevertheless, it appears that no follow up steps were taken to review these issues further subsequent to the briefing note referred to below.
34	Briefing Note, COT006365.
35	Evidence of Garrett, December 6, 2002, pp. 27-34.
36	The documentation consists of a Master Lease, Program Agreement, certificates of acceptance, and equipment schedules. These terms and the mechanics of the lease documents were described at various times in the evidence; See e.g. evidence of Rob Ashbourne, December 16, 2002, at pgs 110-118; evidence of Peter Wolfram, January 7, 2003 at pp. 131-133; January 8, at pp. 162-166, affidavit of Rob Wilkinson paras. 52, 146, transcript, September 16, 2003 at pp. 59-60, 100-101; evidence of Wilkinson, September 18, 2003 at pp. 157-158 and September 23, at pp. 148-150 line 10. It is clear that the City was under no obligation to lease anything from MFP during any given quarter and could have decided to purchase, or finance the technology acquisitions it made from time to time in whatever manner it deemed appropriate.
37	Evidence of Garrett, December 6, 2002, p. 30, indicating that no issue as to the fairness of the contract was raised at the time of the controversy in January, 1998; as in the case of <u>all</u> of the rates applicable to the MFP leases, no evidence was adduced before the Inquiry that suggested that the rates were unfair or outside of market parameters.
38	COT006355, Report of City Auditor to Audit Committee.
39	COT059688.
40	Ibid. Both the note and Andrew's evidence (September 30, 2003 at pp. 196-197, see COT059688) recognize that one of the benefits of leasing was to spread the cost of acquiring the assets over a large period of time. This briefing note refers to a written submission titled "Computers for Councillors", which was apparently prepared by City of Toronto IT Staff and provided to Mr. Gee; that document was not produced by the City in this Inquiry.
41	COT006365.

No.	Note Text
42	Evidence of Garrett, December 6, 2002, p. 31.
43	The City auditor, Jeff Griffiths testified that no one from the City has inquired as to whether the numbers of the Transition Team agreed with the belief expressed in the briefing note that the costs would be borne by the Province. And although the newspaper articles referred to in Note 33 are somewhat confusing on the point, they appear to suggest that special funds had been specifically set aside for computer upgrading prior to amalgamation and that it was the Transition Team who made the decision to order the computers. See generally, the evidence of Mr. Griffiths, September 9, 2003, referred to in Footnote 44.
44	See evidence of Jeff Griffiths, September 9, 2003, pp. 149 to 153, regarding the follow up in relation to the Transition Team, and see COT029991, 30016-17 and 30019 (Audit Committee Report No. 1, Clause No. 1) at pg 25 – 26 and 28.
45	Mr. Griffiths agreed that whatever omissions occurred in relation to the recovery of the aforementioned funds, they had "absolutely nothing" to do with MFP; Transcript, September 9, 2003, at p. 153:14-19.
46	Requests (largely unsuccessful) to obtain additional documentation relating to these and other matters were the subject of numerous informal discussions and correspondence during the Inquiry.
47	See COT074849, 74854 and 74858 "Information Technology Interim Work Plan" July 3, 1997, which specifically identified the analysis of "Funding Strategies" as a "Critical Activity" and contemplates an analysis of "Lease v. Buy"; see also COT038754, "Providing the New City of Toronto" pp. 48 to 52 (COT038818 – 38822; see also COT038855 (Final Status Report) at pp. 67 to 70 (38940-38943); COT039053, extract from report re Information Technology Systems, mid 2000, stating (at 39055), "the City is currently in the process of developing a comprehensive IT strategy . . .".
48	See, e.g. the evidence of Michael Garrett, December 8, 2002 at pp. 135-141, COTO 38940 – 38943; COTO 38969-38977; December 9, 2002 at pg. 46 line 15; pg. 47 line 11, and pp. 132 – 140; evidence of Jim Andrew, September 24, 2003, at pp. 104-105, 117; evidence of Kathryn Bulko, August 11, 2003 at pp. 59-60; affidavit of Lee Ann Currie, para 1 – 22, September 2, 2003 at pp. 9-16.
49	This made it difficult, if not impossible for departments from different municipalities to communicate with each other electronically, or generate consistent, integrated electronic reports.
50	The survey completed by the original Year 2000 Committee suggested that the City had a substantial number of desk top computers that were over 5 years old.

No.	Note Text
51	See, in addition to the references in Footnote 47 and 52, the Affidavit of Rob Wilkinson, para. 156 (5)(a)(b) and (c), September 16, 2003 at pp. 111-112.
52	For a description of the state of affairs in the City's IT Department as of the Fall of 2002, two years after the issues with MFP arose, see Assetlinx Report No. 2, Exhibit 61, Volume 2, at pg. 19; evidence of Mr. Kerr, September 15, 2003 and see para. 362-363, MFP submissions and references in notes 621 – and 622 referred to therein. See also COT052095 – "Presentation – Final Report, Information and Technology, L4 Organizational Design".
53	Evidence of Garrett, December 9, 2002, pp. 132 – 34. See also COT035660, at 35666.
54	The first meeting of the Year 2000 Committee took place February 12, 1998 (COT039415). It was "struck for the purpose of assessing the impact of the Year 2000 Millennium Bug on the City of Toronto."
55	The Year 2000 Committee met 16 times between February 1998 and May 14, 1998. Minutes of 14 of these meetings are reproduced in Exhibit 35.
56	Reference to this survey can be found in the minutes. See COT002239, at paragraphs 3, 8 and 10. The contents of the survey are alluded to in COT002218 at paragraph 1.
57	See COT002259 and COT002081; the actual results detailing the City's desk top population do not appear to be within the data base.
58	COT001586.
59	The initial report recommended that the City Treasurer "bring forward a report on options for funding the initial request of \$85 million before the Year 2000 Program" (at COT001591). Under the heading "Technology Info-structure", this initial report states that "leasing will be utilized as a method of reducing the cash flow impact on the City" (at COT001603).
60	According to the document prepared by the City Clerk, Council adopted the July 22, 1998, report from the Chief Administrative Officer and Chief Financial Officer and Treasurer. Certain existing expenditures were approved, but the steps required to achieve the key milestones to ensure business continuity through the Year 2000 were to be the subject of a further report by the CAO to the Strategic Planning and Policies Committee at its first meeting in November 1998.
61	COT015898.

No.	Note Text
62	The projected Y2K costs had risen from \$85 million in January to \$146.6 million in the November report. According to the March 10, 1999 response to a request made by the Deputy Mayor (COT001096) for a breakdown of the Year 2000 budget by type and expenditure, by the date of this report, the projected costs of hardware and software associated with Y2K now aggregated \$65.4 million.
63	See Affidavit of Councillor Dick O'Brien, paragraph 12, transcript, September 8, 2003, at p. 10.
64	The record is somewhat confusing as to when the members of the new Y2K Committee were appointed. The November 3rd Report suggests that some members had already been appointed by that date, but the precise timing of this is unclear. The record indicates that the first meeting of the Y2K Committee did not take place until January 11, 1999 (see paragraph 13 of the Affidavit of Dick O'Brien, transcript, September 8, 2003, at p. 10, and Exhibit 35, Tab 15, COT000030)
65	COT001409.
66	COT0015967.
67	See the cross-examination of Jeff Griffiths, September 10, 2003 at pp. 125-132.
68	Ben Smid was the Auditor's representative. Apparently he devoted approximately 10% of his time to monitoring compliance with the Y2K program (Griffiths, September 10, 2003 at pp. 136-138; Despite this, Mr. Griffiths took the position his group had no responsibility to monitor the amounts expended through the Y2K project on computer assets (Griffiths, September 10, 2003 @ 150-151).
69	Exhibit 35 contains agendas and minutes of 31 separate meetings of the Y2K Committee from January 1990 – March 2000.
70	See, e.g. COT000073 (Item 4); COT000086 (Item 3b – Status on Financial Expenditures). From April 1999 onwards, the minutes and agendas repeatedly refer to ongoing status reports on financial expenditures.
71	See, e.g. COT000045, Item 1. They were also unrelated to the Strategic Policy and Planning Committee (See e.g. COT000047, Item 3(b) and to the Senior Management Team ("SMT") meetings (see COT000045, Item 3(a) and COT000070, Item 1). Ultimately, a Y2K "wrap up" report was submitted to City Council, which made it clear that over \$70MM of Y2K related assets had been placed on lease during the program: see note 455, below.

No.	Note Text
72	COT039656; COT000161 (Items 5(b)(c)); COT000741 (Item 4d); COT000106 (Item 6b); COT0000179 (Item 6); COTO15225 (Item 2(e); COT000328 are examples of direct involvement of Councillors in the Y2K briefing processes.
73	See reference to Oracle in COT000302 (Item 2), COT010902 (Item 1), and COT000363, approving COT010902.
74	The leasing RFQ indicated that 9,000 new desktops were being acquired in calendar 1999, with an additional 4,000 desktops in subsequent years (COT006104 @ 6117, para. 4). The actual number of desktops involved was 14,000 according to Ms. Bulko, see: Transcript, August 11, 2003 @ 21-22, August 12, 2003 @ pgs 192-193, and COT015898 @ 159-10.
75	This was confirmed by all of the witnesses directly involved in the process and by the Commission's expert Mr. Kerr (September 15, 2003 at p. 107).
76	See Begdoc COT035686.
77	Similarly, the RFP for Light Fleet Leasing contained no reference to any conflict of interest provision, but did direct (Article 6.4) vendors to the need to familiarize themselves with several City policies, none of which related to "conflict of interest" rules or policies (see evidence of Wolfram, September 28, 2002, at pp. 145-146)
78	See COT035686 @ 35708, para. 9.3; see also evidence of Peter Wolfram, September 28, 2004 at pp. 145-147.
79	The "blackout" period applicable to entertainment was not written down in any rule or policy. One view was succinctly referred to in the note prepared by Joan Anderton (COT041295), which asserts (apparently according to Ms. Liczyk and another Commissioner, Joe Halstead) that entertainment was "ok as long as there isn't an active RFP". Other witnesses differed as to when any blackout period would commence – the alternatives include shortly before the issuance of an RFP/RFQ, the date of issuance, or the date of the bid responses and the commencement of the evaluation process. One witness questioned whether a blackout period was necessarily appropriate and was not aware of any blackout period: Dan O'Neil, July 11, 2003, pp. 173-178.
80	Paragraph 1.4 thereof refers to the author's access to and awareness of the Gartner Group as a resource to the City; see also COT064190 and COT064211, contained in Exhibit 53 at pp. 34-96 and evidence of Mr. Altman, July 10, 2003 at pp. 44 51.
81	COT025131.
82	See evidence of Ashbourne, December 16, 2002, p. 95.
83	COT025447 to COT0254452.

<b>No.</b>	<b>Note Text</b>
84	Evidence of Ashbourne, December 16, 2002, pp. 100-103.
85	COT025137; Ashbourne, December 16, 2002, pp. 103-4.
86	COT023587; Ashbourne, December 16, 2002, pp. 104 and following.
87	See evidence of Ashbourne, December 16, 2002, pp. 123-33.
88	See evidence of Ashbourne, December 16, 2002, pp. 123-33.
89	Ashbourne, December 16, 2002, pp. 134-37; COT025303.
90	Ashbourne, December 16, 2002, p. 137.
91	It appears that, in its apparent acceptance of this plan, that City Council was content to bear financing costs associated with the equipment for many years after the end of its useful life.
92	The record includes a handwritten note suggesting that Mr. Domi's first day was on or about November 2, 1998: COT042003 at 42009.
93	Wolfraim, December 18, 2002, pp. 165-172, 176-177 and 185.
94	Wolfraim, December 18, 2002, pp. 176-177.
95	See paragraph 65 and note 126.
96	This was referred to at various places in the evidence; see, e.g., Domi, February 10, 2003, pp. 95-99.
97	Contrary to Mr. Domi's recollection (see note 96), he was paid commission on account of other public sector clients: Wolfraim affidavit, para. 9(1), September 27, 2004 at p. 17, and Exhibit A thereto.
98	Evidence of Mr. Domi, e.g. January 23, 2003 at pp. 21-22, January 27, 2003 at pp. 153-154; February 10, 2003 at pp. 11-15.
99	See, e.g. Wolfraim affidavit, para 24-25, September 27, 2004 at pp. 27-28.
100	COT042009.
101	Wolfraim affidavit, para. 24, September 27, 2003 at pp. 27-28.



No.	Note Text
102	See COT025256 and 25266 to 25269, which document MFP's lease proposal for the SAP system. This proposal was in response to COT025271, which states "the City of Toronto wishes to finance its SAP enterprise planning system through LEASING". Page 3 of that document (COT025273) summarizes the components as alluded to in paragraph 53. This proposal was issued by the City less two weeks after a meeting among Andrew, Willschick, and Brittain (see COT013706) to "discuss lease options for equipment". COT015460 indicates that the MFP proposal was circulated to James Andrew and Len Brittain. Brittain could not remember anything about this proposal or the City's apparent decision to lease significant IT assets in early February 1999: Brittain, July 30, 2003, pp. 28-37; Andrew had a limited recollection and testified that this had been discussed with Mr. Brittain and Martin Willschick: Andrew, October 1, 2003, pp. 53-59.
103	COT025182; evidence of Ashbourne, December 16, 2002, pp. 141-48. A presentation was given at this meeting, a copy of which is found at COT025193.
104	Ashbourne, December 16, 2002, pp. 148-157; COT025254-25255 and COT025250-25252. DFS also provided the City with a lease versus purchase analysis, among other things: see e.g., COT075489.
105	Ashbourne, December 16, 2002, pp. 156-157.
106	Ashbourne, December 16, 2002, pp. 16, 140-141.
107	Affidavit of Wanda Liczyk, at para. 113, transcript, November 3, 2003, pp. 48-49; and the evidence of Ashbourne, December 17, 2002, pp. 134, 184-185.
108	See, e.g., Len Brittain, July 28, 2003, at pp. 81-83, July 30, pp. 42-46 and Jim Andrew, October 1, 2003, g. 60. See also: Dan O'Neil, June 11, 2003, p. 188; Robert Simone, April 14, 2003, p. 183; Scott Marentette, April 17, 2003, 167-170; Chris Kerr, September 15, 2003, pp. 98-99.
109	Ashbourne, December 17, 2002, pp. 176-180, and December 16, 2002, pp. 123-133, 138-140; see also December 16, 2002, pp. 97-100.
110	Ashbourne, December 17, 2002, p. 176.
111	Ashbourne, December 17, 2002, pp. 179-180.
112	Ashbourne, December 16, 2002, pp. 97-100; COT025132 and COT025133.
113	Ashbourne, December 16, 2002, pp. 123-124.

No.	Note Text
114	"MFP Stars Night Out", COT029125-COT029126; Ashbourne, December 16, 2002, pp. 124-25. "Legends of Hollywood Cruise", COT029114-COT029115; Ashbourne, December 16, 2002, pp. 126-27. In addition, it appears that Lana Viinamae was invited to an event sponsored by MFP, although Ashbourne could not recall the details: December 16, 2002, p. 139; COT029104-COT029105.
115	Ashbourne, December 16, 2002, pp.16 and 140-41; affidavit of Wanda Liczyk, at para. 113 (transcript, November 3, 2003, pp. 48-49).
116	See, generally, Ashbourne, December 16, 2002, pp. 123-41.
117	Ashbourne, December 16, 2002, p. 174; December 17, 2002, p. 140. See also evidence of Irene Payne, January 14, 2003, p. 154.
118	According to Payne, Ashbourne also had private sector accounts which he did not want to give up and she felt he was "spread too thin": January 13, 2003, at pp. 135-138.
119	Despite several attempts, Mr. Ashbourne was not able to meet with Ms. Liczyk (Payne, January 15, 2003, pp. 71-73). And Ms. Payne testified that she felt that more "focus" was needed on the City of Toronto account: January 13, 2003 at 138-139.
120	Mr. Domi testified that, in his view, certain internal memoranda overstated the extent or effect of his efforts, but that by the fall of 1999, he would have considered that he had "strong" relationships with Ms. Liczyk, Mr. Andrew, and Mr. Jakobek (Domi, January 22, 2003 at 148-52). Aside from Mr. Domi, there were several MFP witnesses who indicated that Mr. Domi was attempting to make such contacts. And, at various points in his initial nine day appearance as a witness, Domi testified that he spent a large amount of time (in the Spring of 1999) simply hanging around at City Hall, attempting to put himself in the face of City personnel.
121	As noted below, Domi's attribution of expenses to the City of Toronto, and his inclusion of named individuals on particular receipts, was inaccurate, unreliable, and overstated his actual contacts with City personnel.
122	Transcript, November 3, 2003, at pgs. 49-53.
123	Transcript, September 24, 2003 at pgs. 23-28.
124	Liczyk affidavit, para. 118, Transcript, November 3, 2003 at p. 51, it is evident that the banquet did not leave much of an impression with Mayor Lastman: see, Transcript December 2, 2002 at p. 91.
125	See paras. 263-268 below.

No.	Note Text
126	The individuals included John Danson, Vince Nigro, Rob Godfrey and Paul Godfrey.
127	See Lastman, December 2, 2002, pp. 51 and 96 (Danson); December 3, 2002, pp. 64-65 (Rob Godfrey); December 2, 2002, p. 93 (Nigro). The Mayor also testified that none of these individuals did anything whatsoever to influence him, or, to his knowledge, any City employee in relation to MFP: December 3, 2002, pp. 72-73.
128	See, e.g., Domi evidence, January 27, 2003, pp. 170-176; January 28, 2003, pp. 37-42, 47-50, 191-192; and evidence of Nigro, January 16, 2003, pp. 188-120 and following.
129	The Commission did its own investigation and affidavits were circulated (but not formally filed) which indicated that the individuals in question had nothing whatsoever to do with the leasing contracts in issue.
130	The evidence indicates that Mr. Nigro was a good friend of Mr. Domi, and that he told Domi "who was who" at City Hall. No City witness testified that Nigro had said anything to them or that he was involved in any way in the computer leasing RFQ.
131	Evidence of Vince Nigro, January 16, 2003 at pp. 21-23.
132	When this issue first arose, it was suggested to Mr. Wolfraim that Mr. Lyons was hired to consult with respect to the prospective City computer leasing tender. Mr. Wolfraim denied this was the intention (Wolfraim December 18, 2002 at pp. 184-188). See also paragraphs 72 and 74 of these submissions.
133	COT040455 and COT040454.
134	The letter expressly discloses that Lyons acted for DFS (COT040455). In Lyons' evidence he explained that his intention, and understanding, was that he would not be representing MFP in areas which conflicted with DFS's interests (May 12, 2003, pp. 17-47).
135	See COT042142 at 42155.
136	See Payne's termination letter to Lyons: COT040449.
137	See Lyons' response to termination letter from Payne: COT040445.
138	Evidence of Mr. Marentette, April 17, 2003 at pp. 20-23; evidence of Mr. Simone, April 14, 2003 at p. 27.
139	Evidence of Jeff Lyons, May 12, 2003 at pp. 30-33.
140	Evidence of Sue Cross, May 6, 2003 at pp. 30-33, 115.

No.	Note Text
141	COT075424; COT075432; COT075439; COT075418.
142	Various references to Lyons' activities on behalf of MFP are contained in COT042179 and COT042202.
143	The documents include those produced voluntarily by Lyons and his former law firm, as well as over 20 boxes of documents produced following the dismissal of Mr. Lyons' application for Judicial Review. None of these materials contain any evidence that Lyons was acting on behalf of MFP regarding the computer leasing RFQ.
144	See Note 102.
145	See Note 102.
146	See, e.g. COT075431 and evidence of Mr. Altman, July 9, 2003 at pp. 193-196.
147	See, particularly, the discussion of the City's plans and options in COT075431. This effort extended right up to the eve of the submission of bids: COT075418.
148	See, e.g. Marentette, April 17, 2003, at pp. 167 – 170; Simone, April 4, 2003, at pp. 188 – 190; and O'Neil, June 11, 2003, pp. 184 – 186.
149	COT005219.
150	See evidence of Brendan Power, March 5, 2003 at pp. 160-164.
151	Several witnesses testified to this effect. See, e.g. Pagano, February 24, 2003, at 142; Power, March 6, 2003, at 101; Beattie, March 31, 2003, 154 – 156.
152	See, e.g. examination (December 18, 2002, at pp. 203 – 206) and cross-examination (January 4, 2003, at pp. 150 – 155) of Peter Wolfram.
153	Toronto Star, December 19, 2002 (“it was also revealed yesterday that Domi’s files in his office at MFP contained City of Toronto draft bid documents . . . . One of the documents is a draft of a request for proposals dated April 30, 1999. But a final version of this request for proposals was not made public until May 31, 1999, according to Mr. Manes”); Toronto Globe and Mail, December 19, 2002 (Headline: “MFP had internal City data”). See, Commissioner’s statement, December 2, 2002 at pp. 8 – 13.
154	Affidavit of Karim Kassam, paras. 6 – 10, June 9, 2003, at pp. 30 – 31.
155	Kassam Transcript, June 9, 2003 at pp. 55:9 and 131-132.
156	COT061500 at 61540-41.

No.	Note Text
157	Affidavit of Karim Kassam, paras. 23 – 24, June 9, 2003, at pp. 34 – 35; Sandy Pessione, February 13, 2003 at pp. 19 – 20.
158	Len Brittain, Lana Viinamae, Frank Spizarsky, Dave Beattie, Nadir Rabadi, Michael Franey and, indirectly, Jim Andrew. See, e.g., COT005219, COT005220, COT005800, COT012834, COT015660, COT015661; evidence of Brendan Power, March 6, 2003, pp. 119-125, 154-181; affidavit of Jim Andrew, paras 97-103, transcript, September 24, 2003, pp. 50-53.
159	According to Mr. Pagano, Mr. Spizarsky was well qualified and occupied a senior position in his division: February 24, 2003, pp. 135-136; February 26, 2003, 158-162. Obviously Mr. Brittain occupied a very senior position, and Ms. Viinamae also had significant responsibilities.
160	Michael Garrett, December 9, 2002, pp. 150 and 186-187; Chris Kerr, September 15, 2003, pp. 4-7.
161	COT012834—see handwritten notation at paragraph 1.1.1.
162	Brendan Power, March 6, 2003, pp. 69-72, 85-86; March 26, 2003, p. 39; affidavit of Lana Viinamae, para 49, October 15, 2003, p. 25; affidavit of Nadir Rabadi, para 18, June 24, 2003, p. 127; evidence of Rabadi, July 2, 2003, pp. 66-67; July 3, pp. 82-84.
163	Brendan Power, March 25, 2003, pp. 170, 174-176.
164	COT006104.
165	See articles 1.1.21 and 4 (COT06107 and 6117), and evidence of Brendan Power, March 6, 2003 at pp. 172-174.
166	Brendan Power, March 6, 2003, pp. 168-173.
167	See articles 1.1.17 and 2.11 (COT06106-7 and 6115).
168	The MFP witnesses called who participated in this process, in varying degrees, and different contexts, were Peter Wolfrain, Irene Payne, Dash Domi, Sandy Pessione, Mike Flanagan, Rob Wilkinson and Kim Harle.
169	See, e.g. evidence of Peter Wolfrain, December 18, 2002 at p. 138.
170	The evidence also indicated that, generally, MFP makes its profit on the “residuals” – see, e.g., Wolfrain, December 18, 2002, at pp. 86 – 90. Garrett, December 5, 2002, p. 136 , lines 10 – 11; Tyrone Bakti, February 27, 2003, pp. 112 – 117.

No.	Note Text
171	From MFP's standpoint, "residuals" are not only the key risk, but also the key reward: Wolfram, December 18, 2002 at p. 87.
172	For a description of how the grid works in a lay person's terms, see Ashbourne, December 16, 2002, at pp. 57 – 58.
173	Evidence of Wolfram, December 18, 2002, at pp. 19-20, 23-24 and 104-105; December 19, 2002, p. 72; January 7, 2003, pp. 75-76; Evidence of Flanagan, February 18, 2003, pp. 10-11, 56-57 and 59-73; February 19, 2003, pp. 84-87, 94-97, 108-113 and 184-185; Affidavit of Wilkinson, para 27, transcript, September 16, 2003, pp. 41-42.
174	Wolfram, December 18, 2002, pp. 21-22.
175	Wilkinson Affidavit, para 23, September 16, 2003, p. 40.
176	Pessione Transcript, February 13, 2003 at pp. 7:13-8:13
177	COT026700, COT023260.
178	Wilkinson Affidavit at para 34; transcript, September 18, 2003 at pp. 45-48.
179	Wilkinson Affidavit at para.28, transcript, September 18, 2003 at p. 45.
180	Wilkinson Transcript, September 18, 2003 at pp. 45:20-46:15; Wilkinson Transcript, September 22, 2004 at pp. 34:14-37:16.
181	See: Wilkinson Affidavit, para 29-34, September 16, 2003, pp. 42-45, and reference in note 178; Liczyk affidavit, paras 104 and 287, November 3, 2003, pp. 47 and 106; Liczyk evidence, November 5, 2003, p. 183; Simone, April 14, 2003, p. 183; Marentette, April 17, 2003, pp. 167-169; COT075424, COT075427, COT075432, COT075438, COT075489, COT075439, COT075428; Andrew affidavit, September 24, 2003, paras 14, 16 and 64, at pp. 14, 15 and 37-38. See also, documents referred to in paragraph 344 (1)-(4) of the MFP submissions.
182	COT023260; Wilkinson Affidavit at para 32; Wilkinson Transcript, September 16, 2003, at pp. 184-185.
183	It is clear that this was discussed and generally known when the RFQ was being prepared. See Brendan Power, March 6, 2003, pp. 92-94, 156-157; March 27, 2003, pp. 194-196.
184	Wilkinson Affidavit at para 32, transcript, September 16, 2003, at pp. 43-44.
185	Wilkinson Affidavit at para 33, transcript, September 16, 2003, at p. 44; Wilkinson Evidence, September 16, 2003, at p. 97.

No.	Note Text
186	Wilkinson Affidavit at para 34; Wilkinson Transcript, September 16, 2003 at p. 193:8-193:15
187	Wilkinson Affidavit at para 45; transcript, September 22, 2003 at p. 40:9-40:14.
188	Wolfram testified that he viewed such communications as being in the nature of a pitch from the salesman involved: December 18, 2002, pp. 140-142; January 7, 2003, pp. 33, 74, 95-96; January 8, 2003, p. 100.
189	Wolfram, Transcript, September 27, 2004 at p. 253:2-253:25.
190	Wolfram, Transcript, January 7, 2002 at pp. 94:12 – 96:17.
191	See COT023413 at 23425 and the evidence of Nadir Rabadi, June 25, 2003, at pp. 78-80; June 26, 2003, pp. 204-205.
192	In fact, the Master Lease from the existing Councillor transaction was attached as an exhibit to MFP's response to the Leasing RFQ and the City had entered into a number of Equipment Schedules pursuant to those contractual arrangements.
193	COT056913–Compaq Response to City Computer Leasing RFQ, at p. 15 (56927); COT003979–Dell Response to City Computer Leasing RFQ, at COT003990.
194	COT072876–MFP's Response to City Computer Leasing RFQ, at p. 10 (72888).
195	Wilkinson Affidavit at para 49(2); transcript, September 22, 2003 at pp. 120:3-127:8; Wolfram, transcript, January 8, 2003 at pp. 160:3-162:25.
196	Wilkinson Affidavit at para 46, transcript September 16, 2003, at p. 49.
197	Wilkinson Affidavit at para 43, transcript, September 16, 2003, at p. 48; see also the evidence of Michael Flanagan, February 18, 2003, at pp. 61-62, 94-100; February 19, 2003, at pp. 137-144.
198	Pessione Transcript, February 13, 2003 at pp. 56:24 - 60:13.
199	Affidavit of Dave Beattie, para 18, transcript, March 31, 2003, pp. 60-61.
200	COT006102. Note that, while there was conflicting language on p. COT006104, nevertheless it is evident that prices were, in this case, read aloud, as was evidently the usual procedure (see, e.g., the Affidavit of Dave Beattie, para 18, transcript, March 31, 2003, pp. 60-61). See also the evidence of Sandy Pessione, February 13, 2003, p. 60.
201	Sandy Pessione, February 13, 2003, pp. 59-61.

No.	Note Text
202	Ibid. See also COT036353.
203	See, e.g., the evidence of Pessione, February 13, 2003 at p. 61. See also the evidence of Dave Beattie, March 31, 2003, pp. 166, 221-222; Nadir Rabadi, July 2, 2003, p. 149; Brendan Power, March 25, 2003, pp. 135-136, and March 26, 2003, p. 45; Jim Andrew, September 29, 2003, pp. 9-10; and Wanda Liczyk, November 4, 2003, pp. 19-20.
204	Affidavit of Nadir Rabadi, para. 24 (transcript, June 24, 2003, p. 128).
205	COT014312; Affidavit of Len Brittain, para. 18 (transcript, July 10, 2003, p. 148).
206	Rabadi, June 25, 2003, p. 33; July 2, 2003, pp. 176-180; COT018126, and its attachments COT018127 and COT018128.
207	See Rabadi Affidavit, para 36, transcript, June 24, 2003, at p. 132; COT018126 – 18128. Beattie denied that Purchasing had any role in reviewing this analysis (see, e.g., Beattie Affidavit, para 24, transcript, March 31, 2003, p. 63, and Beattie evidence, March 31, 2003, p. 172.
208	Affidavit of Nadir Rabadi, paras. 24 and 25 (transcript, June 24, 2003, p. 128).
209	Rabadi, July 2, 2003, p. 149.
210	COT014077, COT014078 and COT014084
211	COT014099.
212	COT014100, COT014112 and COT014113.
213	Rabadi Affidavit, para. 36(a), transcript, June 24, 2003, p. 132; COT018126.
214	Rabadi Affidavit, paras. 41-42, transcript, June 24, 2003, p. 134; Rabadi, July 2, 2003, pp. 192-194; COT012290.
215	Rabadi Affidavit at para 42, transcript, June 24, 2003, p. 134.
216	COT018124, and the Affidavit of Len Brittain, para. 30 (transcript, July 10, 2003, p. 151). While Mr. Beattie's response in COT018124 may not have been completely accurate, in that not every response to section 1.1.17 was the same as MFP's (Compaq's and Dell's <i>were</i> of the same nature), this reflects that MFP's response was not unusual and not regarded by Mr. Beattie as non-compliant or raising any special issues.
217	Rabadi Affidavit, para. 31, transcript, June 24, 2003, p. 130; COT012765.



No.	Note Text
218	COT014133.
219	COT013050; Andrew's response of June 27th is found at COT013051.
220	COT031847 and COT031848.
221	Rabadi Affidavit, paras. 34 and 35, transcript, June 24, 2003, p. 131; COT018126, COT018127 and COT018128. Although for some reason it does not appear as an attachment to COT018126 in the database, the faxed version of the draft report referred to in the email would appear to be that found at COT003878.
222	COT013052.
223	COT012715 and COT012716. Mr. Rabadi's next draft, which incorporated these changes, is found at COT005770: Rabadi Affidavit, para. 43, transcript, June 24, 2003, p. 134.
224	COT014134. This enquiry was a follow up to Rabadi's email of June 25 to Power: COT014133.
225	Rabadi Affidavit, para. 45, transcript, June 24, 2003, p. 135 and COT014320.
226	Rabadi Affidavit, para. 45, transcript, June 24, 2003, p. 135.
227	Rabadi affidavit, paras. 43-57, transcript, June 24, 2003, pp. 134-38; see also COT05770, COT012884, COT015671, COT012270, COT067473, COT031855, COT004232, COT014321, COT014322, COT012257, COT013805, COT031860, COT014362, COT014363, COT014140, COT041048, COT014180 and COT004230.
228	Rabadi, July 2, 2003, p. 224.
229	Rabadi, July 2, 2003, pp. 199-200.
230	Altman, July 10, 2003, pp. 126-127.
231	Brittain, July 30, 2003, pp. 71-72.
232	Rabadi, July 2, 2003, p. 238-40; COT031872.
233	COT032202.
234	COT032202 at p. 3, item (ii), p. 4, item ii), last two paragraphs on p. 4 and Appendix B (32208).
235	Brittain, July 30, 2003, pp. 207-08; COT013021, at 13024.

No.	Note Text
236	Altman, July 9, 2003, pp. 185-188; Exhibit 49, vol. 3, Tab 9, pp. 17-20 (COT074402).
237	Rabadi, July 2, 2003, pp. 241-243; COT006104 (at p. 8 / 6117); note that Brittain understood those elements of the RFQ in the same way, even though he did not read the document until long after the fact: transcript, July 30, 2003, pp. 87-88
238	Rabadi, July 3, 2003, pp. 7-8.
239	Brittain, July 30, 2003, pp. 86-88 and 90-92; see also COT012275.
240	Rabadi, July 3, 2003, pp. 12-15; COT031877 and COT031878.
241	COT014221 and its attachments, COT014222 and COT014223.
242	COT032202, especially at pp. 2 (item 4) and 5 (reference to central management of contract administration by I & T Division).
243	COT032202 at p. 2, item 4.
244	COT032202 at Appendix C (32209).
245	COT014221, COT014222; COT014223; Power Transcript, March 24, 2003 at pp. 124-125.
246	It is not clear whether Mr. Andrew attended the in camera session of the July 20th meeting of the Policy and Finance Committee. According to Wanda Liczyk, he was present: see her affidavit, para 170, transcript, November 3, 2003, pp. 67-68. According to Mr. Andrew, he may have been at the public part of the meeting, but ultimately he stated that he did not recall being present at the in camera session, although even on this point his evidence is ambiguous: transcript, September 30, 2003, pp. 135-145. Mr. Rabadi testified that he was not present at the meeting, but was not sure of the reason why he did not go, and recalled being surprised at how short the meeting was (based upon a discussion with Mr. Brittain) and did not know whether anyone from Finance, except Mr. Brittain, went to the meeting: transcript, July 2, 2003, at pp. 230-232. Mr. Brittain was present at the in camera portion of the meeting but had no recollection of the discussions leading to the amendment: Brittain Affidavit, para 36, transcript, July 10, 2003, p. 153. In the result, the most detailed description of that discussion came from Mr. Jakobek, the only Councillor who testified about this meeting.
247	Jakobek Transcript, May 14, 2003 at pp. 143-203.
248	In particular, there was no evidence of any opposition to the motion or that it had been aggressively sponsored by Mr. Jakobek, and the motion was passed unanimously.

No.	Note Text
249	See, e.g., the evidence of Don Altman, July 8, 2003, p. 54, the evidence of Len Brittain, July 30, 2004, p. 96, and the Affidavit of Jim Andrew, para 94, transcript, September 24, 2003, pp. 49-50.
250	Mr. Brittain and Ms. Liczyk were the only witnesses called at the Inquiry who acknowledged being at the in camera session, other than Councillor Jakobek.
251	Jakobek Transcript, May 22, 2003 at pp. 20-23.
252	As is evident from note 251, questions regarding interviews with other Councillors present at the in camera session arose on May 22, 2003, during Mr. Jakobek's initial appearance as a witness. Mr. Jakobek was re-called on September 8, 9 and 10, 2004, but he did not give any further evidence, nor was he cross-examined about his earlier description of the July 20th in camera session. See also paragraph 11, letter to Commission Counsel dated March 31, 2004.
253	This request was detailed in letters to Commission Counsel dated March 31, 2004 (paragraph 7-9) and April 2, 2004.
254	This conclusion is based upon the review of the evidence referred to in the correspondence identified in note 253 and applies to the following witnesses: Mel Lastman, Wanda Liczyk, Lana Viinamae, Jim Andrew, Brendan Power, Nadir Rabadi, Ralph Freebold, Len Brittain, Lou Pagano, Dave Beattie, Don Altman, Michael Franey, Glenn Vollebregt, Martin Willschick, Ken Colley, Al Shultz, Joan Anderton and Kathryn Bulko.
255	City Council Minutes for July 27 -29, 1999: COT012219.
256	COT027582.
257	Stevens Transcript, February 17, 2003 at pp. 46-53.
258	Harle Affidavit at paras 17-20; Harle Transcript, November 24, 2003 at pp. 35-39.
259	See also evidence of Harle, November 24, 2003, pp. 37-39.
260	COT042158.
261	Wilkinson Affidavit, para 52; Wolfram Recall Affidavit, para 30; Rollock Transcript, June 10, 2003, pp. 176-178; Pessione Transcript, February 13, 2003, pp. 122-123.
262	Wilkinson Affidavit at para 54 –56.
263	See evidence of Brian Loreto, April 2, 2003, p. 155.

No.	Note Text
264	COT006104, at article 1.1.3 (6105).
265	This is summarized in paragraphs 54-78 of the Wilkinson Affidavit, and paragraphs 21-22 of the Harle Affidavit at paras 21 to 22.
266	See COT003675, COT011117, COT011121, COT011123 and COT011126.
267	Wilkinson Affidavit at para 58.
268	COT003675, at paragraph 3 (Letter from Fecencko to Power): this wording was added to the beginning of the operative clause in the Master Lease Agreement.
269	See COT006443 at 6444 (this time includes 2.3 hours apparently spent by another lawyer in Mr. Fecencko's firm).
270	Fecencko Transcript, April 3, 2003 at pp. 220-224.
271	Wilkinson Affidavit, paras 61-62, transcript, September 16, 2003, pp. 63-64; see also COT029795, reflecting the availability and use of outside legal services by the City on an ongoing basis, consistent with COT006447.
272	The City itself made it clear that this was known and understood by the terms of its own RFQ: COT006104, at articles 1.1.3, 1.1.4, 1.1.16 and 1.1.17.
273	The difficulties were summarized in Mr. Wilkinson's affidavit, and necessitated the assignment of Lee Ann Currie to assist the City: see Wilkinson Affidavit, paras 59, 63 and 66, transcript, September 16, 2003, pp. 62, 64, 65-66; Affidavit of Lee Ann Currie, paras 6-16, transcript, September 2, 2003, pp. 10-13. None of the City witnesses involved in the sale leaseback denied that the City records were inadequately organised to reconcile the data; as confirmed by Mr. Colley, MFP assisted the City over an extended period of time in this process: Ken Colley, September 4, 2003, pp. 131-134.
274	See Andrew evidence, October 23, 2003, at pp. 137-144, 152-155, 162 and 199-200.
275	Nadir Rabadi makes reference to the City's original plan to finance the acquisitions through ten year debentures and the circumstances which necessitated a change from that approach: Rabadi Affidavit, paras 62-63, transcript, June 24, 2003, at pp. 140-141. See also Rabadi evidence, July 2, 2003, pp. 232-234, and evidence of Len Brittain, July 30, 2003, at pp. 115-116 and 125-126.
276	Wilkinson Affidavit at paras 52-78.
277	Wilkinson Affidavit at para 64.

<b>No.</b>	<b>Note Text</b>
278	Wilkinson Affidavit at paras 44 and 52; Wilkinson Transcript, September 16, 2003, pp. 207-208.
279	Wilkinson Affidavit at para 66; Wilkinson Transcript, September 16, 2003, pp. 221-226.
280	Wilkinson Affidavit, para 65.
281	Wilkinson Affidavit at paras 69 and following; Wilkinson Transcript, September 16, 2003, p. 226.
282	Wilkinson Affidavit at para 70; COT036589 to COT036592.
283	Wilkinson Affidavit at para 70; COT036590.
284	Wilkinson Affidavit at paras 69 and 71-74.
285	Wilkinson Transcript, September 16, 2003, pp. 240-241.
286	Wilkinson Affidavit at para 71; Wilkinson Transcript, September 16, 2003, pp. 240-241.
287	Wilkinson Affidavit at para 71; Wilkinson Transcript, September 18, 2003, p. 82.
288	Wilkinson Affidavit at para 71; Wilkinson Transcript, September 18, 2003, p. 85-86.
289	Wilkinson Affidavit at para 72; Wilkinson Transcript, September 18, 2003, p. 82.
290	Wilkinson Affidavit at paras 71 and 73; Wilkinson Transcript, September 18, 2003, p. 85 and September 23, 2003, pp. 139-139.
291	Wilkinson Affidavit at para 74.
292	Wilkinson Affidavit at para 74.
293	Wilkinson cross-examination, transcript, September 22, 2003, at pp. 138-167.
294	COT029302.
295	COT013063, COT013253, COT013254, COT064004.
296	COTO13064, COT015551, COT074705.

<b>No.</b>	<b>Note Text</b>
297	COT064006 is a short note located by Mr. Brittain just before he testified, which refers back to the September 21st meeting and reflects internal City discussions at a follow up meeting on September 22nd. Brittain had very little recollection about this note; see, e.g., July 10, 2003, pp. 224-230; July 28, 2003, p. 170; and July 30, 2003, pp. 174-176. However, these notes appear to refer to a gradual refresh (3/4/5 years), and to assets in addition to the initial tranche of \$43 MM.
298	COT015770. See Ms. Marks's testimony on August 14, 2003, at pp. 30 and following.
299	See, e.g., evidence of Lana Viinamae, October 22, 2003, at p. 188.
300	See, e.g., COT012229, COT015690, COT015529 (and its attachment at COT015530) and COT029387, and the evidence of Len Brittain, March 3, 2003, pp. 157-165, and Ken Colley, September 4, 2003, pp. 111-112.
301	Currie Affidavit at paras 11-21.
302	Currie Affidavit at paras 19 – 21; Currie Transcript, September 2, 2003, pp. 33: - 34:25; see also Wilkinson Affidavit, at paras 59 and 83.
303	See, e.g.: the evidence of Ken Colley, September 4, 2003, p. 134; evidence of Kathryn Bulko, August 11, 2003, pp. 82-86; August 13, 2003, pp. 18, 121-123; and COT024952.
304	See, e.g., COT035689.
305	COT015770, at 15771 (Line Marks handwritten note); Evidence of Line Marks, August 14, 2003, pp. 39-40.

No.	Note Text
306	<p>It seems that there was a fundamental disconnect between Finance and the CMO about their roles and responsibilities in relation to the lease rate factors. The record indicates that Power received the initial 60 month lease rate factors (COT014234), and that despite Leggieri's contention that the information was sometimes late in coming, MFP provided and the City accepted quarterly lease rate factors thereafter.</p> <p>Power testified that he did not analyze the lease rate factors and was not sure if anyone else did, although he appears to have assumed the task was undertaken by the CMO or Finance (Power, March 24, 2003, pp. 24-25, 48-51, 56-68; Mar 25, 2003, pp. 34-36, 164-166).</p> <p>The CMO witnesses made it clear that they did not perform any analysis but understood and believed that Finance had received the quarterly lease rate factors and had assumed the task of analyzing and negotiating them (Bulko, Aug. 11, 2004, pp. 109-124; August 12, 2003, pp. 104-105; August 13, 2003, pp. 193-194; Leggieri, April 9, 2003, pp. 158-172, 177-178; September 2, 2003, pp. 100-106; Line Marks, affidavit, para 57, Aug. 13, 2003, p. 235). Ms. Viinamae testified that Finance had performed this role (affidavit, paras 75-78, transcript, October 15, 2003, pp. 36-38; evidence, October 17, 2003, pp. 4-27; 32-46; October 21, 2003, pp. 90, 113-119).</p> <p>It was clear that Finance knew (as paragraph 1.1.17 of the RFQ made clear) that after 90 days the lease rates would be variable (Brittain, July 30, 2003, pp. 64-68), but Mr. Brittain assumed that the initiating department had enough expertise at least, to know to seek assistance from Finance to analyze the five year rates (Brittain, July 31, 2003, pp. 110-111). Other Finance witnesses were adamant that Finance had not been asked to undertake this task and did not begin to do so until the spring of 2001 (Liczyk, affidavit, paras 215-216, transcript, November 30, 2003, p. 84 ; Colley, affidavit para 9, transcript, Sept 2, 2003, pp. 236-237; evidence September 3, 2003, pp. 52-54, 72, 77-78; September 4, 2003, pp. 174-179.)</p>
307	Wilkinson Affidavit at paras 85-86; COT014234 (Email from MFP to B. Power, dated October 6, 1999).
308	Wilkinson Affidavit at paras 76-77, and 85, transcript, September 16, 2003, pp. 70-71, 75-76; Wilkinson Transcript, September 23, 2003, pp. 125, 144-145.
309	COT026824.
310	See note 308.
311	COT039673 (see item 2 (a) on the first page).

No.	Note Text
312	Internally, in the spring of 2001, Mr. Freebold reviewed the lease rate factors which had been provided by MFP, and drew various conclusions regarding the alleged implicit interest rates inherent in them, based upon his calculations. Apart altogether from the accuracy of Mr. Freebold's assumptions and calculations, Mr. Kerr testified that this was a relatively simple analysis, which the City was well capable of undertaking itself and which was not the responsibility of a leasing company: Kerr, September 15, 2003, pp. 184-188.
313	Wilkinson Affidavit at para 87.
314	Wilkinson Affidavit at para 87; Wilkinson Transcript, September 16, 2003, pp. 217-219.
315	COT024110; COT024113; COT024257; COT013995; COT024267; COT024268; COT004881; COT004883; COT024531; COT027614; COT024556 (references from para 86 of Wilkinson Affidavit).
316	Wilkinson Transcript, September 16, 2003, at pp. 217-219; Wilkinson Transcript, September 23, 2003, at p. 46.
317	See also, Wilkinson evidence, September 23, 2003, at pp. 160-168.
318	COT013065.
319	See, e.g., COT006014, COT030564, COT031768, COT032172, COT013065, COT064007, COT064008, COT015752, COT005240, COT061755, COT030576 and COT065179.
320	Brittain Transcript, July 10, 2003, p. 199; Garrett Transcript, December 5, 2002, pp. 138-139.
321	Brittain Transcript, July 10, 2003, pp. 200-202.
322	Wilkinson Transcript, September 23, 2003, pp. 171-173.
323	COT029991, at 30060-30061.
324	The numerical impact of this in relation to the initial \$43 MM was calculated by Mr. Brittain in his January 6, 2000, memo to Ms. Liczyk: COT064007.
325	See Rabadi Affidavit, at paras 62 and 63, transcript, June 24, 2003, at pp. 140-141; Liczyk Affidavit, paras 91 and 170, transcript, November 3, 2003, at pp. 41-42 and 67-68. See also evidence of Liczyk, November 3, 2003, at pp. 198-199, 216-225 and 234; November 19, 2003, at pp. 122-123.
326	Evidence of Wanda Liczyk, November 19, 2003, at pp. 124-125.



No.	Note Text
327	Evidence of Michael Garrett, December 9, 2002, at pp. 169-170.
328	See, e.g., evidence of Mayor Lastman, December 3, 2002, pp. 144-145; evidence of Michael Garrett, December 9, 2002, at pp. 101, 137, 141-150; December 10, 2002, pp. 57-59; evidence of Jim Andrew, October 14, 2003, at pp. 38-40 and 48-50; evidence of Wanda Liczyk, November 5, 2003, at p. 91; evidence of Len Brittain, July 29, 2003, pp. 16-19; July 30, 2003, pp. 20-21, 27-28, 51, 56-58, 120-122, 153-154, 170-172. In addition, the report of the City Auditor, Mr. Griffiths, contained within COT029991, clearly reflects an expectation that the appropriate City staff would conduct a financial analysis in relation to leasing issues.
329	See, e.g., evidence of Peter Wolfraim, December 18, 2002, pp. 69-71; evidence of Rob Ashbourne, December 17, 2002, pp. 146-151; evidence of Michael Flanagan, February 18, 2003, pp. 122-123; February 19, 2003, pp. 167-168, 171-174; affidavit of Robin Wilkinson, paras 73, 87-89 and 97, transcript, September 16, 2003, at pp. 73-74, 77-78 and 82.
330	See, e.g., evidence of Scott Marentette, April 17, 2003, pp. 182-188; evidence of Dan O'Neil, June 11, 2003, pp. 190-192.
331	Evidence of Peter Wolfraim, December 18, 2002, pp. 97 and following.
332	COT023261; evidence of Peter Wolfraim, December 18, 2002, p. 114.
333	Peter Wolfraim, September 28, 2004, at pp. 93-96.
334	See also Wilkinson affidavit, paras 38-43, transcript, September 16, 2003, pp. 46-48.
335	Wolfraim Transcript, December 18, 2002, p. 105.
336	See Wolfraim evidence on re-call, referred to in note 333.
337	Flanagan Transcript, February 18, 2003, pp. 94 – 96.
338	Flanagan Transcript, February 18, 2003, p. 95.
339	As Mr. Flanagan reiterated when cross-examined about the rewrites, the five year leases did not realize any profit: transcript, February 19, 2003, at pp. 213-214.
340	Mr. Flanagan was cross-examined at length about these issues on February 19, 2003, at pp. 150-215.
341	Wilkinson, September 18, 2003, p. 84.

No.	Note Text
342	Wolfram Recall Affidavit at para 57, transcript, September 27, 2004, pp. 40-41, referring to a dramatic increase in MFP's residual recoveries. The actual residual recovery for fiscal 2004 was 161% (the financial report for 2004 is available online at <a href="http://www.clearlink.com">www.clearlink.com</a> ).
343	See, e.g. Pagano evidence, March 4, 2003, at pp. 1 – 100.
344	See, e.g. the list of invitees and participants detailed in the agenda for the December 9, 1999 meeting referred to in evidence: COT064048
345	The procedures were not finalized until July, 2000: Pagano, November 4, 2003, at p. 101
346	Affidavit of Wilkinson, para. 91, transcript, September 16, 2003, pp. 78-79.
347	COT016999 and Pagano, March 4, 2003 at pp. 8-11.
348	COT014246; see also COT013070.
349	COT029387.
350	COT013069.
351	Exhibit 20, Volume 1, Tab 44, p. 4 (see the comments portion of this fax cover sheet).
352	Exhibit 20, Volume 1, Tab 44, pp. 4 and following (fax to Frank Spizarsky, Len Brittain, Lou Pagano from Paula Leggieri dated December 7, 1999, enclosing a draft "Information and Technology Contract Management Office" document similar to COT029387).
353	COT064048. See also COT074893 and COT013776, which also appear to relate to this December 9, 1999, meeting.
354	COT016093.
355	See COT004219 and COT003864, and cross-examination of Lou Pagano, March 4, 2003, pp. 59-65.
356	COT003828.
357	COT064044; see also COT064042 (also found in Exhibit 20, Vol. 2, Tab 87).
358	Pagano, March 4, 2003, pp. 101-104; Exhibit 20, volume 2, Tab 87, pp. 4 and 5.
359	The advantages of leasing were recognized in several documents: see, e.g. COT029387 at 29389.

No.	Note Text
360	According to Power, this was always the intention: Evidence of Power, March 6, 2003 at 61, 69, 75-77,
361	COT029387; and see, e.g., the evidence of Kathryn Bulko, transcript, August 11, 2003, pp. 106-108.
362	COT029387 at 29388.
363	COT029387 at 29388; see also Exhibit 20, volume 1, Tab 44, 6th page in.
364	See, e.g. the detailed rules and procedures in COT029387 at 29389-29393; see also COT014255.
365	The documents make it clear that Purchasing was involved at each step of the development of the rules, through Mr. Spizarsky who reported from time to time to Mr. Pagano: see e.g. COT013069, 64042, and Pagano, March 4, at 18, 37-38, 50-52.
366	See, e.g. COT016093 at 16044, reference 2(a).
367	COT006104 at 6107 (p. 3), article 1.1.21.
368	The "Oracle" witnesses testified for approximately one week from July 31 – August 7, 2003.
369	It appears that when the City Staff reported that the Oracle licenses were a "serious misconsideration", this caused several Councillors, including Mayor Lastman to vote in favour of an Inquiry: see Lastman, December 4, 2002, pp.18-19.
370	Wilkinson Affidavit at paras 88-90, transcript, September 16, 2003, pp. 77-78.
371	Wilkinson, September 23, at 77-80.
372	Marentette, April 17, 2003 at 183-4.
373	COT040456 (Internal City Report, dated 1998, authored by Marilyn Rodriguez re acquisition of Oracle licences).
374	COT039679 (December 9, 1999, Y2K Committee Meeting minutes re acquisition of Oracle licenses); COT000340 (December 30, 1999, Y2K Committee Meeting minutes re acquisition of Oracle licenses).
375	These resolutions adopted the recommendation contained in item no. 12 in COT015898, at 15900.

No.	Note Text
376	COT010902 (January 6, 2000, Y2K Committee Meeting minutes re Oracle licenses on lease).
377	COT035037.
378	Cross-examination of Larry Griffith, August 6, 2003, pp. 201 and following.
379	Wilkinson's evidence, September 18, 2003, at pp. 21-23; COT042879.
380	Larry Griffith, August 6, 2003 at p.203.
381	COT015752.
382	COT013081.
383	COT005240 is a draft briefing note, reviewed by Mr. Brittain, which was prepared for the purpose of the intended report to the Budget Advisory Committee.
384	See reference to January 12, 2000 deadline in COT013081. The Budget Advisory Committee had the mandate to receive and review budget submissions and, from time to time, budget income reports. According to the City of Toronto web site, this Committee met on January 12, 14, February 21, 22, 23, 24, 25, 28 and April 3, 4, 5, 14, 2000.
385	COT005240, COT064008, COT015690, COT013801, COT012229, COT036633, COT030576, COT030577.
386	See COT013539.
387	Mr. Brittain's notes on COT005240 indicate that he recognized that there were "Licence Leases" (i.e., software) with MFP, and that "some may be in Departmental Budgets".
388	COT064007 is a January 6, 2000 note from Len Brittain to Wanda Liczyk referring to his having updated "Lana's Spreadsheet" based upon a meeting held that day. This note expressly refers to the savings realized by the change from 3 to 5 year leases, and to "new costs" for "leasing of the equipment and software/maintenance". The figures tie in to COT005240.
389	See COT013082, COT015690.

No.	Note Text
390	Ken Colley testified at length about the sale lease back reconciliation process, and there were many documents in the data base reflecting this. COT0366633 is a spreadsheet provided by MFP to the City, dated January 18, 2000, showing leases with 5 year terms, and aggregate assets on lease of \$61,115,548.00. A further, updated spreadsheet was provided to the City on May 15, 2000 (COT011078) showing sale lease back assets on lease aggregating \$11,806,909.37.
391	COT013801, COT013802.
392	Evidently they were; see Lana Viinamae affidavit, para. 67-72, October 15, 2003 at pp. 33-35.
393	See the affidavit of Robin Wilkinson, paras. 95-96, transcript, September 16, 2003, pp. 80-82, and COT0366633, COT31677-31768 and COT011076-11077.
394	COT0366633.
395	See the affidavit of Robin Wilkinson, paras. 95-96, transcript, September 16, 2003, pp. 80-82.
396	See evidence of Ken Colley (the finance lead as of February, 2000), September 4, 2003 at pp. 133-134.
397	COT064008 and 30576 are updated versions of the original Briefing notes, and reflect the involvement and comments of Len Brittain and other unidentified City personnel.
398	The documents contain reference to a recommendation from the "Budget Analyst" and reflect a recognition of the impact on the budget for leasing. No Budget Analyst was called as a witness, and none of the "Budget Analyst" files were produced by the City.
399	See the Minutes of the Budget Advisory Committee, April 3, 2000, COT034438 at p. 6 (34443). See also the evidence of Joan Anderton, transcript, November 25, 2003, pp. 149 and following, and pp. 175-183. See also the affidavit of Wanda Liczyk, para. 199, transcript, November 3, 2003, p. 79.
400	In preparing this opinion, the City recognized that it had its own interests to protect, that MFP was protecting its interests, and that this was an arms length process: April 2, 2003 at p. 155
400	In preparing this opinion, the City recognized that it had its own interests to protect, that MFP was protecting its interests, and that this was an arms length process hereto: transcript, April 2, 2003, at pg. 155.

No.	Note Text
401	Brendan Power raised this question in COTO06264 with Mr. Loreto, who in turn raised it with Jim Andrew, Director of Legal Services for the City (COTO06263). Mr. Loreto was advised this was not inappropriate: (see para. 20-23, Loreto affidavit, April 1, 2003, pp. 214-215).
402	Paragraphs 23 – 42 of Mr. Loreto's affidavit (April 1, 2003, pp. 216 – 226) describes the process that was followed. In these paragraphs, Mr. Loreto refers to various draft opinions, apparently prepared by both MFP and the City (see, e.g. para 23, 38, 40, and 41).
403	The account given by Mr. Loreto refers to various discussions with and among Mr. Power, Ms. Viinamae, Spizarsky, and Mr. Freehold; the emails indicate that several of the issues (in particular the issues relating to Ms. Viinamae's sequence authority and the manner in which the leases had been administered) were known to Jim Andrew, Wanda Liczyk, Lou Pagano, Brendan Power, and Mr. Loreto (COT03828, COT06219, COT011038).
404	See Loreto affidavit, para. 40 COT010995: Mr. Loreto testified that the qualification reflected in this draft (i.e. "that the total cost of the transaction contemplated by and entered into by the City as a result of the agreement does not exceed the amount budgeted therefore and duly approved by Council authority") was objected to by MFP as being unreasonable and that he (Loreto) agreed that this was "a City responsibility" and "the City should be keeping track": Loreto, April 2, at pp. 43-47.
405	Loreto also acknowledged this in his evidence: Loreto, April 2, 2003 at pp. 157 and 165; see COT003828 (para. 2 and COT010994 (para. 2).
406	Loreto was aware of and turned his mind to this issue as well: Loreto, April 2, 2003 at 166.
407	March 15, 2000, opinion letter by City Solicitor to MFP: COT010980.
408	Loreto, April 2, 2003 at pp. 155-156.
409	This issue was alluded to in Mr. Loreto's affidavit and reflected in several exhibits attached thereto: see COT010985, COT006228, COT003828, COT011034, COT006219, COT011038, and COT006217.
410	See the emails referred to in note 409, particularly COT003828
411	At the outset of the hearing, MFP prepared a schedule demonstrating that the assets included in the lease schedules identified in the legal opinion delivered to MFP on May 15, 2000 had a total value in excess of \$60,000,000.00. See Lastman, December 4, at pp. 5-7; TAB 17, Exhibit 2, Volume 3; Wilkinson Affidavit, para. 94, September 16, 2003 at pg. 80.

No.	Note Text
412	COT0003828 (among others) described the progress, and the procedures followed (which had been the subject of numerous other meetings and documents). This widely circulated email ended with an assertion that everyone involved had understood and agreed with the procedures described. None of the recipients took issue with this statement.
413	It appears that those involved at the City understood and intended from the outset that apart from the initial Y2K related acquisition, the Departments would continue to place assets on lease as time went by. See, e.g. Brendan Power, March 6, 2003 at pp. 75-76.
414	Transcript, September 16, 2003, pp. 84 - 92.
415	Mr. Wilkinson was clear in his evidence that representatives from the CMO and Finance were present at the discussions regarding the matters. However, no one from the City had any detailed recollection of the meetings in question, and their evidence about this might cause one to think that the decision took place through immaculate conception.
416	Evidence of Wilkinson, affidavit, paragraphs 128 – 131, transcript, September 16, 2003, pp. 93 – 94
417	Ibid: see also evidence of Wilkinson, September 23, 2003, pg. 169
418	Wilkinson also described how, from his perspective, the relations with the City remained positive until the early summer of 2001; the first time any issue was raised about the lease re-write was after it began its review in July – August, 2001: September 23, 2001 at pp. 169-173.
419	Wilkinson, September 23, 2003, pp. 99 – 100 and 158. See also the documents themselves: COT021105, 21505, 21526, 215552 and 21570
420	In Wilkinson's words, he believed the City " . . . was paying attention to what they were doing." Wilkinson also testified about a later instance where he realized that the City had overpaid MFP, and drew that to the City's attention (September 23, 2003, at pp. 166-167
421	Chris Kerr, September 15, 2003 at pp. 115-116.
422	Affidavit of Liczyk, paras. 209 and 210, transcript, November 3, 2003, p. 82.
423	Affidavit of Liczyk, para 211, transcript, November 3, 2003, pp. 82 – 83.
424	Wanda Liczyk, November 19, 2003, at pp. 31-48, and 81-91, culminating in p. 90, lines 10-24.
425	See COT011972.

No.	Note Text
426	Liczyk transcript, November 17, 2003, pp. 118 – 161.
427	The allegation was not put to Mr. Domi when he testified originally because neither Ms. Liczyk nor anyone else had made any suggestion that he had made any statement about the nature of the documents. In his recall evidence, Domi denied having misled Ms. Liczyk about the lease re-write documentation (see Domi Affidavit, April 20, 2004 at pp. 49-52; April 21, 2004 at pp. 64, 81-82.
428	Liczyk transcript, November 17, 2003, pp. 143 – 144, 146:12, 151:9, 156:22, 157:3 and 161:10.
429	This accords with the expectation held by Mr. Kerr – see note 421.
430	See examination by Mr. Manes, November 6, 2003, pp. 79-83, and cross-examination by David Moore, November 19, 2003, p. 106:10 – 20.
431	Wolfraim affidavit, para. 55-56, September 27, 2004 at pg. 40.
432	Mr. Wolfraim testified (like other witnesses at the Inquiry) that he would have expected that the City would have conducted its own analysis regarding the lease re-write, and that the documents and the calculation was simple (September 28, 2004, pp. 153-157). He also described the discussion with the City when it raised the issue in October 2001: September 27, 2004 at pp. 157-159.
433	Al Shultz, June 24, 2003 at pp. 75-77, 79, 89-91, 93 and 99. See also Kathryn Bulko, August 13, 2003, at pg. 103 and the evidence of Ken Colley, to the effect that it would be inappropriate to blame MFP for the difficulties the City had in using the SAP system (September 4, 2003, at pg. 151).
434	COT004161.
435	COT031667, COT015699; see, e.g. Bulko, August 13, 2003 at pp. 192-193.
436	The City's intent in creating an affective system and data to enable it to allocate costs to "cost centres" was also reflected in written communications to MFP: see, COT024137.
437	Evidence of Wilkinson, transcript, September 16, 2003, at pp. 266-269; COT031894 at 31896.
438	COT016336.



No.	Note Text
439	Budget variance reports were submitted which should have and apparently did identify variances in the quantum of assets placed on lease: see evidence of Ken Colley, September 4, 2003, pp. 114, 130, 164-168; and evidence of Al Shultz, June 24, 2003, pp. 12-13, 15, 23-26.
440	See, e.g. COT015707 and COT030579.
441	COT027476.
442	COT027476.
443	Wilkinson affidavit, para. 138-141, September 16, 2003 at pp. 96-98.
444	Wilkinson affidavit, para. 141, transcript, September 16, 2003 at pg. 98; see COT017054, COT066484, COT061795, COT071129, COT027485 and CCOT017054.
445	Wilkinson affidavit, para. 144, transcript, September 16, 2003 at pp. 99-100. See also COT029326, and evidence of Joan Anderton, November 25, 2003 at pp. 226-227
446	See, inter alia, documentary references in note 444 above. If anyone had read or paid attention to the documents being circulated, they would have been aware that the leasing program was ongoing (i.e., additional assets were being added to the leases from time to time), the quantum of leased assets significantly exceeded \$43MM, the term of most of the leases was for five years, and there was a significant sale leaseback component to the transactions.
447	Affidavit of Jim Hart, paras. 6 – 9; transcript, June 12, 2003, pp. 13 – 14.
448	Affidavit of Jim Hart, paras. 11 – 12, transcript, June 12, 2003, p. 15; COT029776.
449	Affidavit of Jim Hart, para. 31, transcript, June 12, 2003, p. 31; COT015536 (email from Novina Wong to Jim Hart dated October 23, 2000).
450	Affidavit of Hart, paras. 35 – 36, transcript, June 12, 2003, p. 23.
451	MFP's involvement in the replacement of this equipment is summarized in para. 142-143 of Mr. Wilkinson's affidavit; Transcript, September 16, 2003 at pp. 98-99.
452	Affidavit of Jim Hart, para. 38, transcript, June 12, 2003, pp. 23 – 24.
453	COT006355, at p. 8 (COT006362).
454	COT031894 at 31895-96, COT061009.

No.	Note Text
455	COT035037, attaching COT035039, COT035040 and COT035041.
456	COT035023 (see item 9.14 at p. 14 of the document, COT035037), COT035045 (see item 13. 1 at p. 2 of the document, COT035046).
457	The documents referred to in note 455 were provided to the Budget Advisory Committee: see Affidavit of Wanda Liczyk, paras 242-254, transcript, November 3, 2003, pp. 93-97. These documents refer to an unfavourable leasing variance (35038) and plainly show (35040) that the assets leased through the Y2K project had an aggregate value well in excess of \$43MM (\$73,067,688).
458	Affidavit of Wilkinson, paras. 147 – 151, transcript, September 16, 2003, pp. 101- 104.
459	Ibid., para. 147, transcript, p. 101.
460	The meetings, deliberations, and documents relating to the establishment of the CMO make this clear. See, e.g. COT036621, which refers to MFP as “the approved Vendor of Record for leasing” (second paragraph).
461	Affidavit of Wilkinson, para. 148, transcript, September 16, 2003, p. 102.
462	COT008256.
463	COT008423.
464	COT008744 (RFP), at p. 4 (8747).
465	COT008423 (MFP response) at p. 12 (8434).
466	Ms. Bulko and Ms. Anderton were both involved in this RFQ. Neither suggested that there had been any issue raised about MFP's response to this article.
467	COT004626.
468	COT009201.
469	COT057016.
470	Kathryn Bulko, August 1, 2003, at pp. 138-139: apparently, the photocopiers were only replaced on an ad hoc, emergency basis.
471	See COT008526 at 8529, which refers to estimated annual savings of \$1.7MM if the report were implemented.

No.	Note Text
472	See Ms. Bulko's anecdotal description of these problems, August 1, 2003 at pp. 139-142, and COT065252, COT066847, and COT067095.
473	See COT012803; apparently, this did not cause any concern to be registered: see evidence of Ms. Anderton, November 25, 2003, at pp. 225-226.
474	See, e.g. COT029326, COT064013.
475	See, e.g., evidence of Ms. Anderton, November 25, 2003, at pp. 229-232.
476	COT029326.
477	COT029326.
478	It is evident from the City's internal emails that senior staff were monitoring the publicity in relation to the City of Waterloo: e.g., COT0030881, COT030885, COT066867 and COT012757.
479	The details of all of the efforts to achieve a business solution to the issues, which the City raised after its review of the leases, was not fully explained in the evidence. The City's own documents confirm that if the City had been able to negotiate a reduction in the size of the Oracle contract directly with Oracle, MFP was willing to substitute other assets to make up the difference in the quantum of leased assets (see COT019595 and COT030597-8). However, this was deemed by the City to be of little advantage – likely because of business and operational issues that have absolutely nothing to do with MFP (COT030597, COT042879 – 42881 (see paragraph four on this page)).
480	COT032275 and COT032284.
481	COT029991.
482	The terms of reference were drafted by the City's external counsel (presumably their litigation Counsel) and established by City Council Staff based in part upon suggestions from Council members: see COT029991 at 30022-6. They recite various assertions of fact which are in dispute and omit many facts and circumstances necessary to provide a balanced summary of the issues.
483	In the documentation provided by MFP to Commission counsel in August 2002, MFP included extensive documentation relating to all of the potentially relevant entertainment, consisting of both individual salesperson records and backup documentation, as well as records relating to corporate expenditures and events involving the City of Toronto.

No.	Note Text
484	This would have been possible through the subpoena of expense records from a cross-section of vendors with material, ongoing dealings with the City of Toronto during the relevant period.
485	Jeff Griffiths, September 9, 2003, pp. 208-211.
486	Robert Simone, April 14, 2003, pp. 185-187; Scott Marentette, April 17, 2003, pp. 178-180; Dan O'Neil, June 11, 2003, pp. 185-188; John Rollock, June 10, 2003, pp. 145-148, 186-186.
487	Jeff Griffiths, September 9, 2003, pp. 207-208.
488	For example, the record contains a very large number of documents referring to golf outings paid for by a wide cross-section of vendors who had or sought to have business dealings with the City: see Exhibit 2, volume 1, Tabs 33-163.
489	See, e.g., Exhibit 2, volume 1, Tab 68, which reflects MFP being signed-up for Jim Andrew's golf tournament.
490	Examples include MFP's sponsorship (along with several other vendors) of the Mayor Lastman Golf tournament (\$10,000 in 2000; \$12,000 in 2001), participation as a "Friend" at the Marilyn Lastman Ball (\$15,000 in 2000), and purchase of a "Moose in the City" (\$6,500). See Exhibit 2, volume 1, Tabs 23-27.
491	See references to specific events alluded to in note 490.
492	As described by Mr. Ashbourne.
493	It appears these discussions began at the senior management level, commencing in January of 1998: Michael Garrett, December 9, 2002, pp. 127-130; the rules were not finalized and adopted by Council until the summer of 2000, and were not "rolled out" until March 2001.
494	Michael Garrett, December 9, 2002, pp. 190-197. And it is apparent that the practice in the City's IT Department was to engage in extensive entertainment activities with vendors; see, e.g., COT0012047 at 12050 (item (h)).
495	COT040380 (roll out document, March 2, 2001) and COT040386 (City Council adoption of conflict guidelines, August 2, 2000).
496	Evidence of Kathryn Bulko, August 12, 2003, pp. 20, 157 – 159, 161 – 164.
497	COT012047 at 12050.

No.	Note Text
498	Michael Garrett, December 9, 2002, pp. 206-207; Joan Anderton, November 25, 2003, pp. 66-67.
499	See the third paragraph of COT041295.
500	Evidence of Joan Anderton, transcript, November 25, 2003, pp. 134-135, 146-147; COT041295.
501	See COT041295, fifth paragraph.
502	Evidence of Peter Wolfram, September 28, 2004, pp. 142-145; January 8, 2004, pp. 108-111.
503	See COT027683 at 27702 (article 6.4); COT025318 at 25340 (article 9.3); COT006104 at 6108 (article 2.4); COT008423 at 8426 (article 2.4).
504	Paragraph 2.4 in COT006104 and COT008423 refers to “conflict of interest”, but the text makes it clear that each of this relates to a bidder having been retained by another client giving rise to a potential conflict of interest, not to the City’s various code of conduct policies.
505	This was referred to by several witnesses; see, e.g., Garrett, Dec 5, 2002, at pp. 156-157.
506	It is respectfully submitted that to do so would amount to a retroactive application of standards and practices which did not exist at the time.
507	COT028069 (at 28104 – 28109).
508	Ibid., at 28104 (p. 16 of the Annual Report).
509	Evidence of Mayor Lastman, transcript, December 2, 2002, p. 177; December 4, 2002, pp. 37 – 38 and 75 – 76.
510	All of the potentially relevant expense records (both relating to individuals as well as more general MFP entertainment receipts) were produced without redaction (see discussion, January 8, 2003, at pgs 122-125). And MFP attempted, at length, to definitively reconstruct what these records actually showed with Mr. Domi informally, without success: see Wolfram, January 8, 2003, at pp. 111-112, Domi, February 12, 2003, at pp. 25-29.
511	This figure was calculated by Commission Counsel based upon Mr. Domi's expense account records (See Transcript, December 19, 2002, at pp. 100-101).

No.	Note Text
512	See details set out in the chart prepared by Commission Counsel: Domi, January 23, 2003 at pp. 98-99; Exhibit 13, Domi Expenses, Volume 2, TAB 1.
513	Evidence of Pessione, transcript, February 13, 2003, p. 101.
514	Evidence of Peter Wolfraim, January 8, 2003, at pp. 111-129.
515	Evidence of Peter Wolfraim, January 8, 2003 at pp. 112-114.
516	Mr. Domi's evidence and recollection about his expenses was confusing and incomplete. At times he indicated that he was not just "thinking" about the City of Toronto, but discussing the City. See, e.g. Domi, January 29, 2003 at pp. 81-92. What is clear is that there were many receipts allocated to the City where no one from the City of Toronto was present.
517	An example is where Mr. Domi was the host on an evening when MFP rented the box at the Air Canada Centre, and allocated the <u>entire</u> cost to the City of Toronto, even though only a small percentage of the persons present had any connection with the City. See Wolfraim, January 8, 2003 at pp. 125-127.
518	Wolfraim, January 8, 2003, pp. 118-119.
519	See, for example, Wolfraim, January 8, 2003, pp. 120-122.
520	Wolfraim, January 8, 2003, pp. 111-112; see also Domi evidence, January 28, 2003, p. 7, ll. 1-15; February 12, 2003, pp. 25-27 and 29-30.
521	Over the next 17 pages of his testimony, Mr. Wolfraim identified numerous types of adjustments that would be required to obtain an accurate picture of the entertainment expenses properly attributable to the City of Toronto, but explained that it was impossible, despite extensive efforts, to arrive at any definitive figure (see page 128, lines 15-25, January 8, 2003).
522	Wolfraim, January 8, 2003, pp. 127-128.
523	Wolfraim, January 8, 2003, pp. 122-125.
524	A significant proportion of Mr. Domi's testimony related to his expenses and entertainment practices. It became evident as the days went by that attempting to arrive at a clear and accurate reconstruction of expenses that <u>actually</u> involved the City of Toronto was a futile exercise. See, e.g., January 29, 2003, pp. 96-110 and following.
525	Dash Domi testified on January 22, 23, 27, 28, 29, 30 and February 10, 11 and 12, 2003. He also testified during the "re-call" phase on April 19, 20 and 21, 2004.

No.	Note Text
526	Leaving aside the inherent inaccuracies in, and unreliability of, Mr. Domi's expense records, the chart prepared by Commission Counsel (which takes Mr. Domi's expense allocations at face value) demonstrates this fact.
527	See, e.g., the evidence of John Rollock, June 10, 2003, pp. 182-184; evidence of Robert Simone, April 14, 2003, at pp. 187-190.
528	Evidence of Michael Flanagan, transcript, February 22, 2003, pp. 137 – 143.
529	Wolfram transcript, December 19, 2002, pp. 118 – 119; January 8, 2003, pp. 95 – 96.
530	Evidence of Jim Andrew, September 24, 2003, pp. 256 and following.
531	Evidence of Dan O'Neil, June 11, 2003, pp. 183 and following; Michael Flanagan, February 24, 2003, pp. 73 – 74.
532	Dash Domi, transcript February 12, 2003, at p. 146. Various innuendos were raised regarding Mr. Domi's relationship with Ms. Liczyk. The gist of Mr. Domi's evidence was that over time he developed a strong business relationship with Ms. Liczyk and that they became friends. This topic arose on numerous occasions during his lengthy sojourns on the witness stand, see for example, January 23, 2003, pp. 139-170; January 27, 2003, pp. 16-17, 35-47, 136-144; February 10, 2003, pp. 116-120; February 11, 2003, pp. 149-164, 196-210; February 12, 2003, pp. 145-146. Ms. Liczyk made it clear that her contact with Mr. Domi did not involve any "romantic" relationship; see for example Wanda Liczyk Affidavit, paragraphs 281-282, 286-290; Wanda Liczyk evidence, transcript, November 5, 2003, at 32-37, 71-90; November 18, 2003 at 97-100, 119-121; November 26, 2003, at 12-14; 67-70; 85-91; 144-145; 150-151.
533	E.g., see the Affidavit of Jim Andrew, paragraph 49; Jim Andrew, October 7, 2003, p. 114 ("charismatic"); Jim Andrew, October 10, 2003, p. 41 ("consummate salesman"); Affidavit of Wanda Liczyk, paragraph 117.
534	Domi evidence, February 11, 2003, pg. 149-164, February 12, 2003 pg. 130
535	This issue took up a week of the Commissions hearings, and resulted in a September 26, 2003 ruling concluding that there had been no improper reprisal.
536	Ruling Regarding Allegations Made By Paula Leggieri, released February 26, 2003, at pgs. 9-10. As noted therein, the implication of such a relationship (which was never directly put to Mr. Domi) was based solely on the alleged use of the term "boyfriend" by Ms. Bulko, which implication was strongly denied by Ms. Bulko.

No.	Note Text
537	COT061285 (list of calls from Domi's cell phone to Jakobek phone numbers); COT061284 (list of calls from T. Jakobek to D. Domi); COT053846 (list of Domi calls to (416) 709-1731).
538	See, for example, the evidence of Bruce Durling generally, and the documents referred to and exhibits introduced in the course of his testimony: transcript, April 19, 2004.
539	See Exhibit 15, volumes 1 and 2.
540	See Domi evidence, February 12, 2003 at pgs. 131-144.
541	Apart from the cell phone records themselves, it is evident from Ms. Liczyk's affidavit that there were numerous times when Mr. Domi would call and simply leave a message without talking to Ms. Liczyk herself (Liczyk affidavit, paras 116 and 289, November 3, 2003, pp. 50 and 106). See also, evidence of Jim Andrew, September 25, 2003, at pp. 135-140, referring to 200+ calls recorded in the Domi cell phone records over the three-year period from March 1999 – March 2002.
542	See Exhibit 106, Grant Thornton report. The period of review for this report was October 1, 1999 - November 30, 1999 (para. 1.2.1; Report) and the report identified a scope limitation (para. 1.2.4) as Commission Counsel was not prepared to request the banking documentation prior to October 1, 1999. It was clear, despite these limitations, that the Jakobek and related accounts received significant cash deposits <u>prior to</u> Dash Domi's withdrawal of funds from his account: see para. 2.4.1 and pgs. 10-12, Report.
543	Affidavit of Dash Domi, paras. 19 – 22, transcript, April 19, 2004, pp. 186 – 187. Evidence of Dash Domi, April 19, 2004, pp. 230 and following; Affidavit of Tie Domi, paras. 2- 5, transcript, August 31, 2004, pp. 8 – 9; Evidence of Tie Domi, August 31, 2004, pp. 14 and following.
544	See the Affidavits of Irit Shay, sworn September 15, 2004 and September 21, 2004, and the exhibits thereto, Commission exhibit No. 86, Vol. 2, tabs 20 and 21. See also the affidavit of John Mastroianni, General Manager of Pusateri's Fine Foods, Commission exhibit No. 86, Vol. 2, tab 22. Mr. Mastroianni confirmed that receiving \$1,000 bills from customers was not an uncommon practice at Pusateri's. See also the evidence of Tie Domi, August 31, 2004, pp. 78 and following.
545	Evidence of Dash Domi, April 21, 2004, pp. 123 – 140.
546	See evidence re: Jakobek bank record deposits, August 30, 2004 at pgs. 24-25; AMEX records: see affidavit of Rick Neals and the documents appended thereto, Commission exhibit 86, Vol. 1, tab 13.
547	TCLI terms of reference.



No.	Note Text
548	COT029201.
549	Wolfraim transcript, January 7, 2003, pp. 169 and following.
550	Extract from Minutes of City Council, July 27, 28, 29, 30, 1999: COT041359; see also report to Policy and Finance Committee from the CFO and Treasurer and Acting Commissioner of Corporate Services: COT056972.
551	COT027616.
552	Obviously, the documents posted on the City's public web site provided notice to vendors of the City's interest in leasing its light fleet vehicles. Many of these documents were contained in the Wilkinson file provided to Commission Counsel (See para. 45 of the Wolfraim affidavit, transcript, September 27, 2004 at pp. 35-36). Clearly neither MFP nor any other vendor needed to reply upon any private intelligence to be aware of this potential opportunity.
553	As to the first possibility, see: evidence of Mike Flanagan, February 24, 2003 at pp. 11-13.
554	MFP requested production of all of these files from the City on several occasions. And it would have been relatively simple to call the persons instrumental in the drafting of the Fleet Leasing RFP to ask whether there had been any informal circulation of any drafts of the RFP prior to its issuance.
555	Paragraph 46, Wolfraim affidavit, September 27, 2004 at p. 36.
556	It was suggested to Mr. Wolfraim that Budget had provided MFP with another, non public document which listed a detailed inventory of the City's vehicles: Wolfraim, September 28, 2004 at pp. 43-47.
557	No one could be definite about whether MFP received the document directly from the City, or from Budget. But given Budget's historical connection with Fleet Leasing, its possession and disclosure of other apparently non-public information, and its self-perceived close relationship with the City, it is at least possible that Budget was the source: Wolfraim affidavit, paras 44 and 49, September 27, 2004, pp. 35 and 38-39; Wolfraim evidence, September 28, 2004, pp. 31-33. It is MFP's understanding that Budget denied any knowledge of its participation in the Fleet Leasing bid, a position which is impossible to credit.
558	Paragraph 50, Wolfraim affidavit, September 27, 2004.
559	Examination in chief of Rob Ashbourne, December 16, 2002, pp. 179:19 - 180:19.
560	Cross-examination of Rob Ashbourne, December 17, 2002; pp. 162:20 – 165:5.

No.	Note Text
561	This was apparently contemplated when the City was considering the acquisition of additional subway cars (see Brittain evidence, July 28, 2003 at pp. 51-52, July 31, 2003, at pp. 29-38). This evidence makes it clear that the City was aware of the potential double taxation which <u>might</u> arise in a sale lease back transaction, independent of MFP.
562	Affidavit of Rob Wilkinson, para. 79; examination in chief of Rob Wilkinson, September 16, 2003, p. 250.
563	Cross-examination of Kathryn Bulko, August 13, 2003, pp. 124:16 – 126:2.
564	Examination in chief of Brendan Power, March 6, 2003, pp. 72:1 – 73:19.
565	Evidence of Nadir Rabadi, July 3, 2003, pp. 82 – 85.
566	It is submitted that the evidence supports a finding that Mr. Beattie and others in Purchasing were or became aware that there was a sale lease back see. e.g. COT015771; but there was no policy in place at the City regarding these types of transactions, either at the time of the events, or by February 2003: Pagano, February 20, 2003 at pp. 69-70: March 3, 2003 at pp. 162-167.
567	Exhibit 58, Vol. 1, tab 7 (COT013801; COT013802).
568	Cross-examination of Lana Viinamae, October 23, 2003, pp. 202:10 – 202:16.
569	COT013802.
570	COT015584; see also testimony of Ken Colley, September 3, 2003, pp. 28:8 – 29:21.
571	COT072239.
572	Cross-examination of Ken Colley, September 4, 2003, p. 45.
573	It is evident that Mr. So himself recognized that the City had not adequately explained its intention to the Provincial PST authorities: COT015702 at p. 10(a); see evidence of Mr. Colley, September 14, 2003 @ 83-97.
574	COT063979.
575	Cross-examination of Ken Colley, September 4, 2003, p. 67; Exhibit 58, Vol. 2, pp. 4 – 10 (COT062099, COT063209, COT063211 and COT062098); September 28, 2000 letter to Ministry of Finance, COT076639.
576	Exhibit 58, Vol. 2, pp. 37 – 41: COT076698, COT076699.

No.	Note Text
577	Exhibit 58, Vol. 2, pp. 42 – 44: COT076703.
578	Cross-examination of Ken Colley, September 4, 2003, p. 81; Exhibit 58, Vol. 2, p. 10A: COT015702.
579	Cross-examination of Ken Colley, September 4, 2004, pp. 30:25 – 31:9; See also COT076585 and attachments (COT076586, COT076603).
580	See for example, COT063797 and COT062779.
581	COT063797.
582	Cross-examination of Ken Colley, September 4, 2003, pp. 85 – 87.
583	Wilkinson affidavit, paras. 79 – 81, transcript, September 16, 2003, pp. 72 – 73; evidence of Wilkinson, September 16, 2003, pp. 250 – 251; COT036172.
584	Wilkinson, September 16, 2003, p. 251; COT036687 and COT036688.
585	Cross-examination of Ken Colley, September 4, 2003, pp. 106 – 107.
586	COT076621 – Notice of Disallowance of Claim; see also evidence of Ken Colley, September 4, 2003, pp. 78 and 99, and affidavit of Ken Colley, paras. 43 – 45, exhibit 58, Vol. 2, pp. 29 – 30: COT062727.
587	COT063797.
588	Cross-Examination of Ken Colley, September 4, 2003, pp. 85-87.
589	Cross-examination of Ken Colley, September 4, 2003, pp. 98 – 99.
590	Cross-examination of Ken Colley, September 4, 2003, pp. 87:18 – 88:15.
591	See Note 573 above, and evidence of Mr. Shultz, September 5, 2003 at pp. 205-210.
592	COT001586 (at p. 18 of the document, COT001603); see also COT064515 (at 64533) and cross-examination of Kathryn Bulko, August 13, 2003, pp. 116:13 – 118:15; cross-examination of Ken Colley, September 4, 2003, pp. 88 – 91.
593	COT015458 and COT013706; cross-examination of Ken Colley, September 4, 2003, pp. 89 – 91.
594	COT025270 and attachment, COT025271.
595	COT015460; cross-examination of Len Brittain, July 30, 2003, p. 38:2.

No.	Note Text
596	The fact that the City eventually acquired, and used assets having a third party cost in excess of \$85,000,000.00 (i.e. it did <u>not</u> pay over \$85,000,000.00 for assets which only cost \$43,000,000.00), was an acknowledged fact from the very outset of the Inquiry; see, evidence of Mayor Lastman, December 3, 2002 at pp. 74-77. Unfortunately, the public perception is quite different.
597	Affidavit of Rob Wilkinson, para. 155 (3), transcript, September 16, 2003, pp. 106 – 108.
598	See Exhibit D to the affidavit of Rob Wilkinson, sworn September 16, 2003, and para. 155 (3) thereof.
599	Affidavit of Wilkinson, para. 155 (4), transcript, September 16, 2003, p. 108.
600	Ibid., and Exhibit E to the Wilkinson affidavit.
601	COT029991, at pp. 65 and following (COT030059 – 30061).
602	Cross-examination of Len Brittain, July 31, 2003, pp. 125-126.
603	Affidavit of Wilkinson sworn September 16, 2003, Exhibit D, schedule A (COT079913).
604	Affidavit of Wilkinson, para. 155; transcript, September 16, 2003 at pp. 105-108, Chris Kerr, September 15, 2003, pp. 100-102.
605	Affidavit of Wilkinson, paras. 1-7 and 155(2), September 16, 2003 at pp. 32-33 and 105-106.
606	Affidavit of Wilkinson, para. 155(2), transcript, September 16, 2003, pp. 105 – 106.
607	Affidavit of Chris Kerr, para. 11, transcript, September 11, 2003, p. 10.
608	Chris Kerr, September 11, 2003, pp. 22 – 23; September 15, 2003, pp. 101 – 102, 190 – 191.
609	Chris Kerr, September 15, 2003, pp. 191 – 192.
610	Chris Kerr, September 15, 2003, pp. 184 – 185.
611	Chris Kerr, September 15, 2003, p. 188.
612	Chris Kerr, September 15, 2003, pp. 94 – 96.
613	Chris Kerr, September 15, 2003, pp. 102 – 106.
614	Chris Kerr, September 15, 2003, pp. 109 – 112.

No.	Note Text
615	Chris Kerr, September 15, 2003, pp. 98 – 99.
616	Chris Kerr, September 15, 2003, p. 99.
617	Chris Kerr, September 15, 2003, pp. 99 – 100.
618	Chris Kerr, September 15, 2003, pp. 114 – 116.
619	Chris Kerr, September 15, 2003, pp. 97 – 98.
620	Chris Kerr, September 15, 2003, pp. 110 -111.
621	Assetlinx Review of The City of Toronto Asset Management and Technology Refresh Strategy, July 14, 2003 (Exhibit 61, volume 2) at p. 19. See also Chris Kerr, September 15, 2003, pp. 116-134, 147-152 and 159-165.
622	Chris Kerr, September 15, 2003, <i>ibid.</i> , especially at pp. 127-134.
623	Chris Kerr, September 15, 2003, pp. 129-131, 152-160. In fact, Commission counsel sought the parties' consent, and MFP agreed, to the early release of the second Assetlinx Report, to the City Council, prior to Mr. Kerr's testimony. The purpose was to allow City Council to consider, and if so advised, act expeditiously on certain of Mr. Kerr's recommendations, to reduce the City's costs.
624	Affidavit of Wilkinson, para. 156(5) and (6), transcript, September 16, 2003, pp. 111 – 113.
625	Affidavit of Wilkinson, para. 156(3); transcript, September 16, 2003 at pp. 109-110; see also Wilkinson, September 23, 2003, pp. 183-184.
626	Chris Kerr, September 15, 2003, pp. 193 – 197.
627	Affidavit of Wolfraim, paras. 2-10 and the exhibits referred to therein, September 27, 2004 at pp 13-21.
628	Affidavit of Wolfraim, para. 7, September 27, 2004 at p. 15.
629	Affidavit of Wolfraim, paras. 2-4, September 27, 2004 at pp. 13-14; see also Wolfraim, September 27, 2004, at pp. 91 and 94-95.
630	Robert Simone, April 14, 2003, p. 204.

<b>No.</b>	<b>Note Text</b>
631	Based upon, <i>inter alia</i> , the evidence of the City Auditor (Jeff Griffiths, September 10, 2003, pp. 4-83), it is submitted that the numerous checks and balances which were supposed to be in place did not operate as intended.
632	See letter to Commission counsel, April 1, 2004, paragraph 3(1).
633	See Griffiths, September 10, 2003, pp. 71-78.
634	See COT029594, which refers to overspending of \$1.8MM in the operating accounts, capital over-expenditure of over \$2.6MM, and additional unbudgeted commitments estimated at \$1.4MM.
635	See paras. 27 – 30, MFP Submissions.
636	See paras. 322 – 344, MFP Submissions.
637	See para. 165, MFP Submissions.
638	See para. 232, MFP Submissions.
639	See, e.g., para. 211 MFP Submissions.
640	See paras. 245 – 247, MFP Submissions.
641	See paras. 32, 149 and 362-363, MFP Submissions.
642	See, e.g., Micromation Inc. Report, Exhibit 61, volume 2, Tab 7, which contains numerous recommendations that, as of September 2003, the City had failed to implement (evidence of Chris Kerr, September, 2003 15, pp. 69-70).